

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Gupta, et al.
Title: DYNAMIC COST NETWORK
ROUTING
Appl. No.: 10/665,033
Filing Date: 9/18/2003
Examiner: Van Kim T. Nguyen
Art Unit: 2456
Confirmation Number: 4487

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants are in receipt of the Notice of Allowance mailed on February 5, 2010 for the above-referenced application.

The Patent Office determined that the patent was entitled to 1129 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On January 7, 2010, the U.S. Court of Appeals for the Federal Circuit affirmed the September 30, 2008 decision of the United States District Court for the District of Columbia finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Kappos*, No. 2009-1120 (Jan. 7, 2010). The Federal Circuit determined that "[b]efore the three-year mark, no 'overlap' can transpire between the A delay and the B delay," and that

"[i]f an A delay occurs on one day and a B delay occurs on a different day, those two days do not 'overlap' under section 154 (b)(2)."

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 1550 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 1670 days

(b) Total Applicant delay: 120 days

Final PTA Determination: 1550 days

Applicants therefore respectfully request that the patent be accorded 1550 days PTA.

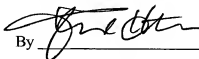
The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date April 30, 2010

By  _____

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Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 088245-7212
 Application Number: 10/665033
 Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	09/18/2003	0		
	14 month From Application date	11/18/2004	427		
	3 Year Period Starts	09/18/2006	1,096		
Edit Delete	Non-Final Office Action	02/05/2008	1,601	(1174)	
	Non-Final Office Action + 3 months	05/05/2008	1,691		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	08/05/2008	1,783		92
	Non-Final Office Action Rsp. Rcv'd at PTO + 4 mo	12/05/2008	1,905		
Edit Delete	Final Office Action	01/22/2009	1,953	(48)	
	Final Office Action + 3 months	04/22/2009	2,043		
	3 Year Period Stopped	05/19/2009	2,070	(974) 1643	
Edit Delete	Request For Continued Examination (including amendment)	05/20/2009	2,071		28
Edit Delete	Non-Final Office Action	06/24/2009	2,106		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	09/09/2009	2,183		
	Non-Final Office Action Rsp. Rcv'd at PTO + 4 mo	01/09/2010	2,305		
Edit Delete	Notice of Allowance	02/05/2010	2,332	27	
	Projected Patent Grant Date	08/17/2010	2,525		
			Totals:	1,670	120
			PTA:	1,550	

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IP: 10.24.4.21

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